

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

---

CHARLENE ROYCE, as parent and guardian of:  
TIFFANY M. WHEELER, and TIFFANY M.  
WHEELER

Plaintiff,

v.

THOMAS R. WHEELER, LISA W.  
HUZELLA, and MICHAELON A. WRIGHT,  
each individually and as acting successor trustee  
of the Thomas M. Wheeler Revocable Trust, u/a  
dated April 9, 1986, as Amended and Restated,  
43 WEST 64TH STREET LLC, a Michigan  
corporation, and WHEELER FAMILY  
FOUNDATION, INC., a Delaware nonprofit  
corporation,

Defendants,

– and –

KRYSTAL WHEELER,

Nominal Defendant.

---

Civil Action No.: 07-CV-10968 (RWS)

AFFIDAVIT OF  
RICHARD A. MARTIN

STATE OF NEW YORK    )  
                                  ) ss:  
COUNTY NEW YORK    )

RICHARD A. MARTIN, being duly sworn, deposes and says:

1.     I am a member of the law firm of Heller Ehrman LLP, Times Square  
Tower, 7 Times Square, New York, New York 10036, counsel to the Defendants Thomas  
R. Wheeler, Lisa W. Huzella and Michaelon A. Wright, acting in their capacities as Co-

Trustees of the Thomas M. Wheeler Revocable Trust, dated April 9, 1986, as amended and restated (the “Trust”), and Defendants 43 West 64 Street LLC, and Wheeler Family Foundation, Inc. (collectively, the “Defendants”).

2. I submit this affidavit in support of Defendants’ Reply Brief In Support of Motion to Dismiss the Amended Complaint for lack of subject matter jurisdiction, and to put before this court certain documents and information relating thereto. I am not related to Thomas M. Wheeler (“Mr. Wheeler” or “Decedent”), and I am not entitled to receive any portion of his Estate or Trust.

3. In Plaintiff’s Memorandum of Law In Opposition to Motion to Dismiss (“Opposition Brief” or “Opp. Br.”), Plaintiff suggests that “Defendants’ Texas attorneys were busy manufacturing the action for declaratory relief while their New York attorneys were requesting multiple adjournments of their time to respond to this action.” (Opp. Br. at 9).

4. Plaintiff’s assertion that defense counsel engaged in dilatory tactics to buy time to put together the Petition for Declaratory Judgment for filing in the Texas Probate Proceedings before filing the Motion to Dismiss in this case is mistaken and misleading. As set forth in further detail below, Plaintiff’s New York counsel, in fact, was responsible for several of the extensions by his own request or invitation, and the filing in the Texas proceedings was necessitated by the requirements of the Will and Trust instruments, and is wholly unrelated to the timing of the motion presented to this Court.

5. The Texas Probate Proceedings were initiated in May of 2007.

6. Plaintiff filed her initial complaint on December 3, 2007, and then filed an Amended Complaint on December 19, 2008, before any responsive papers would have been due.

7. On or about January 16, 2008, Patryk Chudy and I contacted Mr. Charles Berry by telephone to advise him that Heller Ehrman LLP would be representing the Defendants. We asked for a two-week extension of the then-current deadline for Defendants to respond to the Amended Complaint (which was January 31, 2008).

8. By stipulation dated January 31, 2008, the parties agreed that the time for the Defendants to answer would be adjourned to February 15, 2008. The stipulation was “so ordered” by the Court on February 6, 2008. A true and correct copy of this Stipulation and Order is attached hereto as Exhibit 1.

9. On or about January 29, 2008, Mr. Chudy and I called Mr. Berry to advise him of the pending Texas probate proceedings, noting that the Amended Complaint was premised on the mistaken impression that there was no such probate proceeding pending anywhere. As a courtesy, on January 31, 2008, we sent Mr. Berry a copy of the Application for Probate and Issuance of Letters Testamentary filed in the Statutory Probate Court #2 of El Paso County, Texas.

10. On February 1, 2008, I sent a letter to Mr. Berry, requesting that Plaintiff withdraw the complaint in the New York action in light of the ongoing Texas probate proceedings. In view of the February 15 deadline to move, answer or otherwise respond to the Amended Complaint in the New York action, I requested that Mr. Berry advise me by February 7, 2008, whether he would withdraw the Amended Complaint. A true and correct copy of the letter to Mr. Berry, dated February 1, 2008, is attached hereto as Exhibit 2.

11. Mr. Berry responded by letter dated February 4, 2008, indicating that he did not expect to be able to determine whether or not to withdraw the New York action by February 7, and requested additional time to make a decision. In connection with that request for additional time, Mr. Berry suggested that Defendants’ time to respond be

extended by two weeks. A true and correct copy of the Letter from Mr. Berry to Mr. Martin, dated February 4, 2008, is attached hereto as Exhibit 3.

12. By letter dated February 5, 2008, I agreed to Mr. Berry's proposal, noting that Plaintiff could have until February 21, 2008 to advise me whether they would withdraw the New York action, and that Defendants' time to respond to the Amended Complaint, in turn, be adjourned to February 29. A true and correct copy of the letter to Mr. Berry, dated February 5, 2008, is attached hereto as Exhibit 4.

13. On or about February 7, 2008, Mr. Berry sent an e-mail to Mr. Chudy and me indicating that he had decided to extend Defendants' time to answer by another week due to "other commitments that have come up for me on other matters." A true and correct copy of the e-mail from Mr. Berry, dated February 7, 2008, is attached hereto as Exhibit 5.

14. Defendants accepted Mr. Berry's proposal, and pursuant to our agreement, the parties entered into a stipulation extending the Defendants' time to respond to the Amended Complaint to March 7, 2008. The stipulation was "so ordered" by the Court on February 11, 2008. A true and correct copy of this stipulation is attached hereto as Exhibit 6.

15. In his February 7, 2008 e-mail, *see* Exhibit 5, Mr. Berry also asked for a copy of the "entire file" from the Texas probate proceedings. Even though Defendants were under no obligation to do so, I arranged to have Texas counsel for Defendants provide Mr. Berry with the requested documents on or about February 19, 2008, as a courtesy.

16. On or about February 19, 2008, Defendants' Texas counsel filed the Original Petition for Declaratory Judgment (the "Petition") in the same case pending before the Texas Probate Court, and under the same caption that the Application for

Probate of Will and Issuance of Letters Testamentary had been filed in May of 2007. As explained in the Affidavit of Amy S. Sanders, dated March 14, 2008, each of Tiffany M. Wheeler, Krystal Wheeler, Charlene Royce, as parent and guardian of Tiffany M. Wheeler, and Charles Berry, legal counsel to Charlene Royce, were served with notice of the Petition for Declaratory Judgment. *See* Affidavit of Amy Stewart Sanders, dated March 14, 2008, at ¶ 32.

17. The suggestion that Defendants sought to delay filing the Motion to Dismiss until after the Petition for Declaratory Judgment was filed is groundless. As explained in the accompanying Affidavit of Amy Stewart Sanders, dated May 15, 2008, the February 19, 2008 Petition is not a new action, but merely a filing in the action initiated on May 29, 2007, which seeks confirmation for the Co-Trustees to use Trust funds to pay Estate obligations, based upon the express terms of both instruments.

18. On or about February 25, 2008, *after* Plaintiff had notice of the Petition for Declaratory Judgment filed in Texas, Mr. Berry sent an e-mail to me, indicating that Plaintiff would not withdraw the New York complaint. In this e-mail, Mr. Berry stated that he expected Defendants' responsive papers by March 7, but suggested that we "please let [him] know if you need any additional time." A true and correct copy of the e-mail from Mr. Berry to Mr. Chudy and me, dated February 25, 2008, is attached hereto as Exhibit 7.

19. Pursuant to Mr. Berry's unsolicited suggestion that additional time was available, Mr. Chudy contacted Mr. Berry on or about March 4, 2008, to request a two week extension, for purposes of convenience in light of my other obligations. Mr. Berry agreed to extend the deadline by one week, to March 14, 2008. Pursuant to that agreement, the parties entered into a stipulation extending the Defendants' time to answer, move or otherwise respond to the Amended Complaint to March 14, 2008. The

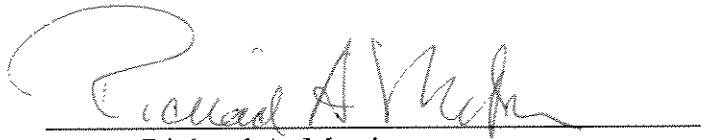
stipulation was "so ordered" by this Court on March 11, 2008. A true and correct copy of the Stipulation and Order is attached hereto as Exhibit 8.

20. Defendants filed and served papers in support of their motion to dismiss for lack of subject matter jurisdiction on March 14, 2008. By this time, Plaintiff's counsel had been in possession of the Petition for Declaratory Judgment, dated February 19, 2008, for almost a month.

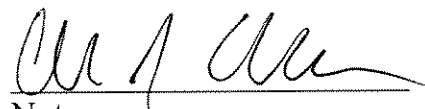
\* \* \* \* \*

The above facts are true and correct, to the best of my knowledge, information and belief.

DATED: New York, New York  
May 15, 2008

  
Richard A. Martin

Sworn to and subscribed  
before me this 5<sup>th</sup> day of May, 2008.

  
Notary

**CHELSEA J. WALSH**  
Notary Public, State of New York  
No. 02WA6176053  
Qualified in Orange County  
Commission Expires Oct. 29, 2011

**MARTIN AFFIDAVIT**  
**EXHIBIT 1**

*Sweet, J*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

CHARLENE A. ROYCE, as parent and  
guardian of TIFFANY M. WHEELER, a Minor,

Plaintiff,

v.

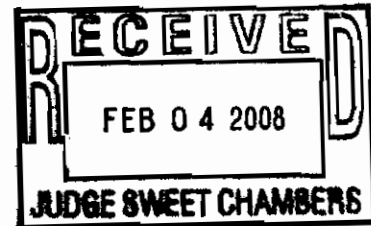
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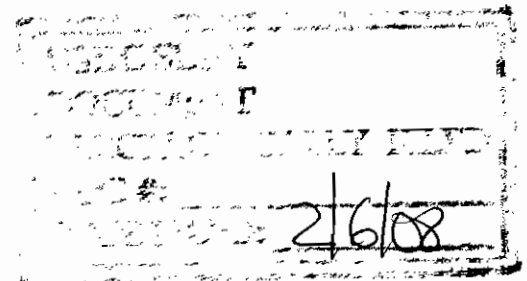
-- and --

KRYSTAL WHEELER,

Nominal Defendant.



Civil Action No.: 07-CV-10968 (RWS)



IT IS HEREBY STIPULATED AND AGREED, by and between undersigned  
counsel for Plaintiff Charlene A. Royce, as parent and guardian of Tiffany M. Wheeler, a  
minor, and Defendants Thomas R. Wheeler, Lisa W. Huzella and Michaelon A. Wright,  
each individually and as acting successor trustee of the Thomas M. Wheeler Revocable  
Trust, u/a dated April 9, 1986, as Amended and Restated, 43 West 64th Street LLC, and  
Wheeler Family Foundation, Inc., as follows:



1. The time for Defendants to answer, move or otherwise respond to the Amended Complaint filed in this action is hereby extended through and including February 15, 2008.

2. This Stipulation may be executed by facsimile counterparts, each of which shall have the same force and effect as an original signature.

DATED: New York, New York  
January 31, 2008

ARNOLD & PORTER LLP

HELLER EHRMAN LLP

By: 

Charles G. Berry (CB 2389)  
Yue-Han Chow (YC 4393)  
399 Park Avenue  
New York, New York 10022  
Phone: (212) 715-1000  
Facsimile: (212) 715-1399

*Attorneys for Plaintiff, Charlene A.  
Royce, as Parent and Legal Guardian of  
Tiffany M. Wheeler, a Minor*

By: \_\_\_\_\_

Richard A. Martin (RM 7668)  
Patrik J. Chudy (PC 8815)  
Times Square Tower  
7 Times Square  
New York, New York 10036  
Phone: (212) 832-8300  
Facsimile: (212) 763-7600

*Attorneys for Defendants Thomas R. Wheeler,  
Lisa W. Huzella, Michaelon A. Wright, 43  
West 64th Street LLC, and Wheeler Family  
Foundation, Inc.*

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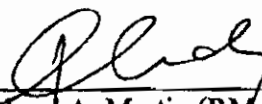
DATED: New York, New York  
January 31, 2008

ARNOLD & PORTER LLP

HELLER EHRMAN LLP

By: \_\_\_\_\_  
Charles G. Berry (CB 2389)  
Yue-Han Chow (YC 4393)  
399 Park Avenue  
New York, New York 10022  
Phone: (212) 715-1000  
Facsimile: (212) 715-1399

*Attorneys for Plaintiff, Charlene A.  
Royce, as Parent and Legal Guardian of  
Tiffany M. Wheeler, a Minor*

By:  \_\_\_\_\_  
Richard A. Martin (RM 7668)  
Patrik J. Chudy (PC 8815)  
Times Square Tower  
7 Times Square  
New York, New York 10036  
Phone: (212) 832-8300  
Facsimile: (212) 763-7600

*Attorneys for Defendants Thomas R. Wheeler,  
Lisa W. Huzella, Michaelon A. Wright, 43  
West 64th Street LLC, and Wheeler Family  
Foundation, Inc.*

DATED: New York, New York  
January \_\_, 2008

SO ORDERED:

*Dweet*  
*2.5.08*

**MARTIN AFFIDAVIT**  
**EXHIBIT 2**

# HellerEhrman<sub>LLP</sub>

February 1, 2008

Richard A. Martin  
Richard.Martin@hellerehrman.com  
Direct +1 (212) 847-8769  
Main +1 (212) 832-8300  
Fax +1 (212) 763-7600

*By Facsimile*

00978.0001

Charles G. Berry, Esq.  
Arnold & Porter LLP  
399 Park Avenue  
New York, NY 10022  
Phone: (212) 715-1000  
Facsimile: (212) 715-1399

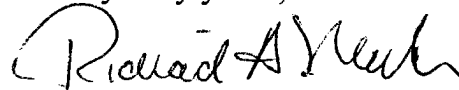
**Re: *Royce v. Wheeler, et al.* Case No. 07 Civ 10968 (RWS) (SDNY).**

Dear Charles:

On behalf of the defendants in the above-captioned action, we write to follow up on our recent correspondence. As we have advised you, the assertion in your Amended Complaint (at ¶ 72) that the January 6, 2007 will has not been probated or offered for probate is incorrect. We have provided you with a copy of the application to the Texas probate court, which shows that the matter has been pending since May of last year. I am advised that at the time that application was filed and the proceedings were initiated, there was no requirement to notify your clients. And, since the counsel then representing your clients had raised no issues relating to the validity of the trust or will, there appeared to be no reason to provide formal notice to them.

In light of the foregoing, we write to request that you withdraw the complaint filed in New York. We hope to avoid having the Trust incur needless legal and administrative costs by litigating in New York issues that can and should be addressed in the earlier-filed Texas proceeding. Please let us know by February 7, 2008 whether you would be willing to withdraw your complaint.

Very truly yours,



Richard A. Martin

**MARTIN AFFIDAVIT**  
**EXHIBIT 3**

---

**ARNOLD & PORTER LLP**

---

212.715.1000  
212.715.1399 Fax

399 Park Avenue  
New York, NY 10022-4690

**Fax Transmittal**

February 4, 2008

<b>RECIPIENT NAME(S)</b>	<b>RECIPIENT FAX NUMBER(S)</b>	<b>RECIPIENT TELEPHONE NUMBER(S)</b>
Richard A. Martin, Esq.	(212) 763-7600	(212) 847-8769
<b>SENDER</b>	<b>SENDER'S TELEPHONE NUMBER</b>	
Charles G. Berry, Esq.	(212) 715-1169	
<b>CLIENT/MATTER NUMBER</b>	<b>TIMEKEEPER NUMBER</b>	<b>NUMBER OF PAGE(S)</b>
22038.002	5105	We are transmitting 2 page(s) (including this cover sheet)

If you experience difficulty receiving this fax transmission, please contact the operator at 212.715.1330.

**MESSAGE**

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**PRIVILEGED AND CONFIDENTIAL**

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ARNOLD & PORTER LLP

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212.715.1000  
212.715.1399 Fax  
399 Park Avenue  
New York, NY 10022-4690

February 4, 2008

By Fax (212-763-7600)

Richard A. Martin, Esq.  
Heller Ehrman LLP  
Times Square Tower  
7 Times Square  
New York, NY 10036-8524

Re: Charlene A. Royce, as parent and guardian of Tiffany M. Wheeler, a Minor,  
v. Thomas R. Wheeler et al., United States District Court for the Southern  
District of New York Case No. 07 Civ. 10968 (RWS)

Dear Mr. Martin:

I am writing in response to your letter dated February 1, 2008, in which you request that we withdraw the complaint in the above action because of the pendency of a probate proceeding in El Paso, Texas.

As you have confirmed, no notice of that proceeding was given to Krystal or Tiffany Wheeler or their mother Charlene Royce, and we were unaware of it until you told me of it on January 16. Mr. Pat Duerr of the Honigman firm, Michigan counsel for the defendants, made no mention of that when he called me in mid-December to acknowledge receipt of our complaint and to request an extension of time to respond thereto, which I agreed to. Nor am I aware that he or anyone else advised prior counsel for Ms. Royce and her daughters of the Texas proceeding. No papers in that proceeding have been served on Ms. Royce or her daughters, and it was not until last Thursday, January 31, that your associate Patryk Chudy furnished a copy to me of the probate application, which indicates that it was filed on May 29, 2007.

Having just entered into a stipulation with you on January 31 to extend further the defendants' time to respond to the amended complaint, I am surprised that the very next day you would suggest that we voluntarily discontinue the action and demand that we do so within less than a week. We cannot agree to advise you by February 7 that we will withdraw our complaint. We would, however, like to see the entire file of the probate proceedings in El Paso, as I requested in my January 31 email to Mr. Chudy. If in the meantime you would like to further extend the February 15 deadline for defendants' time to respond to the complaint, we are willing to enter into a stipulation adjourning that date by two weeks. Please let us know if you would like to do so.

Very truly yours,



Charles G. Berry



**MARTIN AFFIDAVIT**  
**EXHIBIT 4**

# HellerEhrman<sub>LLP</sub>

February 5, 2008

Richard A. Martin  
Richard.Martin@hellerehrman.com  
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Main +1 (212) 832-8300  
Fax +1 (212) 763-7600

*By Facsimile*

00978.0001

Charles G. Berry, Esq.  
Arnold & Porter LLP  
399 Park Avenue  
New York, NY 10022  
Phone: (212) 715-1000  
Facsimile: (212) 715-1399

**Re: *Royce v. Wheeler, et al.* Case No. 07 Civ 10968 (RWS) (SDNY).**

Dear Charles:

I write in response to your letter dated February 4, 2008. I appreciate and accept your suggestion of extending both your time to review the probate documents filed in Texas, and our time to move or answer. Thus, please advise me by February 21 whether you will agree to withdraw the complaint, and we will forward a new stipulation extending our response time through February 29. (We had previously asked for a response by February 7 in light of our prior February 15 deadline to respond to the complaint).

I also want to clarify a few points raised in your letter. To begin with, as I mentioned in my February 1, 2008 letter to you, I was advised that at the time the Texas probate application was filed, there was no requirement to serve Ms. Royce or her two daughters. Moreover, as I understand it, despite approximately ten months of discussions between counsel for the trustees and prior counsel for Ms. Royce and her daughters, your clients never raised any concerns about the validity of the will or trust. In any event, although we are not counsel of record in the Texas proceedings and just recently became involved in the matter, we will make sure that Texas counsel serves you and all three of your clients with papers going forward.

With regard to the timing of our correspondence, I remind you that on January 16, 2008 (not on January 31, as suggested in your letter), we had an agreement to extend the time to respond to the complaint. *See* E-mail from Patryk Chudy to Charles Berry, dated January 16, 2008. We simply formalized the stipulation and submitted it to the Court on January 31. Also, I do not believe that you previously asked for the entire case file or any specific papers from the Texas proceedings. Rather, in your January 31 e-mail to Mr. Chudy, you noted that you “would be grateful to receive any additional papers filed in that proceeding

Heller Ehrman LLP Times Square Tower 7 Times Square New York, NY 10036-6524 [www.hellerehrman.com](http://www.hellerehrman.com)

Beijing Hong Kong London Los Angeles Madison, WI New York San Diego San Francisco Seattle/Anchorage Shanghai Silicon Valley Singapore Washington, D.C.

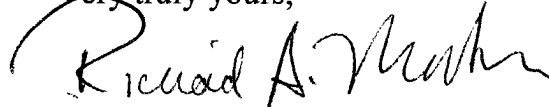
HellerEhrman LLP

Charles G. Berry, Esq.  
February 5, 2008  
Page 2

that [Heller Ehrman] may have.” See Charles Berry e-mail to Patryk Chudy, dated January 31, 2008. We do not have the “entire file” from the probate proceedings, though we would be happy to get it from Texas counsel. To that end, we would appreciate it if you could help us by identifying what it is that you are looking for.

We look forward to hearing from you.

Very truly yours,

A handwritten signature in black ink, appearing to read "Richard A. Martin". The signature is fluid and cursive, with a large initial "R" and "M".

Richard A. Martin

cc: Patryk J. Chudy, Esq.

**MARTIN AFFIDAVIT**  
**EXHIBIT 5**

**Beccari, Beatrice**

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**From:** Charles\_Berry@aporter.com  
**Sent:** Thursday, February 07, 2008 9:14 AM  
**To:** Chudy, Patryk  
**Cc:** Martin, Richard A.  
**Subject:** Wheeler

**Attachments:** DOC000.pdf



DOC000.pdf (95 KB)

Patryk --

Thank you for the draft stipulation. Because of other commitments that have come up for me on other matters, I have extended the date by an additional week, to March 7, which I expect is acceptable to you.

With respect to the file of the proceeding in Texas, I had assumed that the entire file was in your firm's possession, but in any event would like to look at all the papers in it, including hearing transcripts, if you could obtain those and send them to us.  
Thanks.

Charles

---

Charles G. Berry  
Arnold & Porter LLP  
399 Park Avenue  
New York, NY 10022-4690

212.715.1169 (Tel)  
212.715.1399 (Fax)  
646.549.1821 (Cell)  
Charles\_Berry@aporter.com

(See attached file: DOC000.pdf)

"Chudy,  
Patryk"  
<Patryk.Chudy@hellerehrman.c  
om> To  
Charles.Berry@aporter.com  
cc  
"Martin, Richard A."  
<Richard.Martin@hellerehrman.com>  
02/06/2008 Subject  
03:32 PM whee

Dear Charles,

Attached please find a draft stipulation extending the time to respond to the complaint to February 29. If you would kindly execute the stipulation and send me a pdf, we will take care of having it submitted to the court.

I also attach a copy of the docket sheet from the Texas proceedings.  
If you could identify the specific documents you would like to see, we would appreciate it.

Regards,  
Patryk

Patryk J. Chudy | Attorney | HellerEhrmanLLP | Times Square Tower, 7 Times Square | New York, NY 10036  
tel: +1.212.847.8659 | fax: +1.212.763.7600 | email:  
patryk.chudy@hellerehrman.com | web: www.hellerehrman.com

<<Wheeler - 2d stip re response to complaint.DOC>> <<Texas docket sheet.pdf>>

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This email is sent by a law firm and contains information that may be privileged and confidential. If you are not the intended recipient, please delete the email and notify us immediately.

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[attachment "Wheeler - 2d stip re response to complaint.DOC" deleted by Charles Berry/Atty/NY/ArnoldAndPorter]  
[attachment "Texas docket sheet.pdf" deleted by Charles Berry/Atty/NY/ArnoldAndPorter]

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Charles Berry                      Charles\_Berry@aporter.com  
Arnold & Porter LLP              Telephone: 212-715-1169  
399 Park Avenue                  Fax:        212-715-1399  
New York, NY 10022-4690

For more information about Arnold & Porter LLP, click here:  
<http://www.arnoldporter.com>

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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CHARLENE A. ROYCE, as parent and  
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KRYSTAL WHEELER,

Nominal Defendant.

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Civil Action No.: 07-CV-10968 (RWS)

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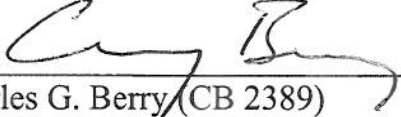
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DATED: New York, New York  
February 7, 2008

ARNOLD & PORTER LLP

HELLER EHRMAN LLP

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Yue-Han Chow (YC 4393)  
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New York, New York 10022  
Phone: (212) 715-1000  
Facsimile: (212) 715-1399  
Charles.Berry@aporter.com  
Yue-Han.Chow@aporter.com

*Attorneys for Plaintiff, Charlene A.  
Royce, as Parent and Legal Guardian of  
Tiffany M. Wheeler, a Minor*

By: \_\_\_\_\_  
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Patryk J. Chudy (PC 8815)  
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Phone: (212) 832-8300  
Facsimile: (212) 763-7600  
richard.martin@hellerehrman.com  
patryk.chudy@hellerehrman.com

*Attorneys for Defendants Thomas R. Wheeler,  
Lisa W. Huzella, Michaelon A. Wright, 43  
West 64th Street LLC, and Wheeler Family  
Foundation, Inc.*

DATED: New York, New York  
February \_\_, 2008

SO ORDERED:

---

**MARTIN AFFIDAVIT**  
**EXHIBIT 6**

*Sweet, J*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

CHARLENE A. ROYCE, as parent and  
guardian of TIFFANY M. WHEELER, a Minor,

Plaintiff,

v.

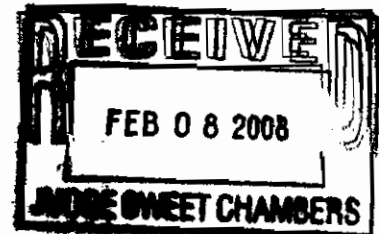
THOMAS R. WHEELER, LISA W.  
HUZELLA, and MICHAELON A. WRIGHT,  
each individually and as acting successor trustee  
of the Thomas M. Wheeler Revocable Trust, u/a  
dated April 9, 1986, as Amended and Restated,  
43 WEST 64TH STREET LLC, a Michigan  
corporation, and WHEELER FAMILY  
FOUNDATION, INC., a Delaware nonprofit  
corporation,

Defendants,

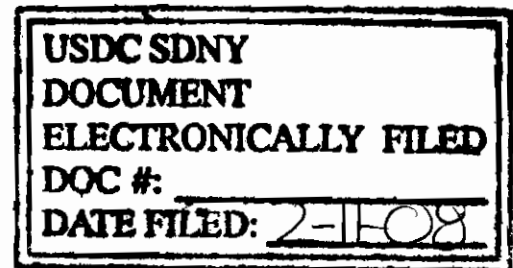
-- and --

KRYSTAL WHEELER,

Nominal Defendant.



Civil Action No.: 07-CV-10968 (RWS)



IT IS HEREBY STIPULATED AND AGREED, by and between undersigned  
counsel for Plaintiff Charlene A. Royce, as parent and guardian of Tiffany M. Wheeler, a  
minor, and Defendants Thomas R. Wheeler, Lisa W. Huzella and Michaelon A. Wright,  
each individually and as acting successor trustee of the Thomas M. Wheeler Revocable  
Trust, u/a dated April 9, 1986, as Amended and Restated, 43 West 64th Street LLC, and  
Wheeler Family Foundation, Inc., as follows:

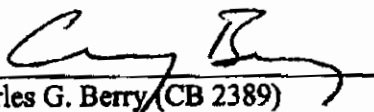
1. The parties, having previously agreed to extend the time for Defendants to answer, move or otherwise respond to the Amended Complaint to February 15, 2008, hereby agree to further extend the response deadline to March 7, 2008.

2. This Stipulation may be executed by facsimile counterparts, each of which shall have the same force and effect as an original signature.

DATED: New York, New York  
February 7, 2008

ARNOLD & PORTER LLP

HELLER EHRMAN LLP

By:   
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Yue-Han Chow (YC 4393)  
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*Attorneys for Plaintiff, Charlene A.  
Royce, as Parent and Legal Guardian of  
Tiffany M. Wheeler, a Minor*

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Ptryk J. Chudy (PC 8815)  
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richard.martin@hellerehrman.com  
pryk.chudy@hellerehrman.com

*Attorneys for Defendants Thomas R. Wheeler,  
Lisa W. Huzella, Michaelon A. Wright, 43  
West 64th Street LLC, and Wheeler Family  
Foundation, Inc.*

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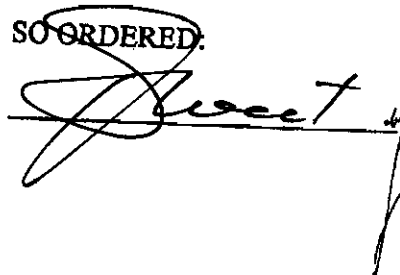
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*Attorneys for Defendants Thomas R. Wheeler,  
Lisa W. Huzella, Michaelon A. Wright, 43  
West 64th Street LLC, and Wheeler Family  
Foundation, Inc.*

DATED: New York, New York  
February 16, 2008

SO ORDERED:

A handwritten signature in black ink, appearing to read "Sweet", is written over a horizontal line. The signature is stylized with a large, looping initial 'S'.

**MARTIN AFFIDAVIT**  
**EXHIBIT 7**



**Beccari, Beatrice**

---

**From:** Charles\_Berry@aporter.com  
**Sent:** Monday, February 25, 2008 10:50 AM  
**To:** Chudy, Patryk  
**Cc:** Martin, Richard A.  
**Subject:** Re: Wheeler

Patryk -

Thank you for the courtesy copies of the papers filed in Texas.

We are not willing to withdraw the complaint in the New York action.

We will expect your responsive papers on March 7 as agreed, but please let me know if you need any additional time. As we discussed some time ago, if you bring a motion at that time, we will plan to work out a briefing schedule with you then.

Charles Berry

---

Charles G. Berry  
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212.715.1169 (Tel)  
212.715.1399 (Fax)  
646.549.1821 (Cell)  
Charles\_Berry@aporter.com

"Chudy,  
Patryk"  
<Patryk.Chudy@hellerehrman.com>  
To  
Charles.Berry@aporter.com  
cc  
"Martin, Richard A."  
<Richard.Martin@hellerehrman.com>  
02/19/2008  
06:57 PM  
Subject  
Wheeler

Dear Charles,

Attached please find courtesy copies of documents filed in the Texas probate court, forwarded to us by Texas counsel. You should be receiving service copies as required in the ordinary course. Also, you should have received by now a copy of the entire file from the Clerk's office in Texas (apart from these documents, of course).

We would appreciate it if you could advise us by the end of this week whether you will withdraw the complaint in the New York action.

Best regards,  
Ptryk

Ptryk J. Chudy | Attorney | HellerEhrmanLLP | Times Square Tower, 7 Times Square | New York, NY 10036  
tel: +1.212.847.8659 | fax: +1.212.763.7600 | email:  
patryk.chudy@hellerehrman.com | web: www.hellerehrman.com

<<Texas petition.pdf>> <<Inventory.pdf>> <<Order re inventory.pdf>>

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This email is sent by a law firm and contains information that may be privileged and confidential. If you are not the intended recipient, please delete the email and notify us immediately.

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[attachment "Texas petition.pdf" deleted by Charles Berry/Atty/NY/ArnoldAndPorter] [attachment "Inventory.pdf" deleted by Charles Berry/Atty/NY/ArnoldAndPorter] [attachment "Order re inventory.pdf" deleted by Charles Berry/Atty/NY/ArnoldAndPorter]

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This communication may contain information that is legally privileged, confidential or exempt from disclosure. If you are not the intended recipient, please note that any dissemination, distribution, or copying of this communication is strictly prohibited. Anyone who receives this message in error should notify the sender immediately by telephone or by return e-mail and delete it from his or her computer.

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399 Park Avenue	Fax: 212-715-1399
New York, NY 10022-4690	

For more information about Arnold & Porter LLP, click here:



**MARTIN AFFIDAVIT**  
**EXHIBIT 8**

Sweet, J

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

CHARLENE A. ROYCE, as parent and  
guardian of TIFFANY M. WHEELER, a Minor,

Plaintiff,

v.

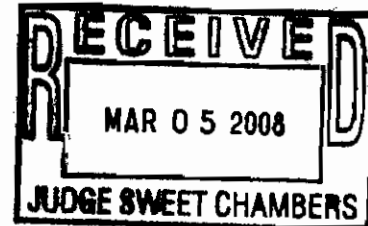
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43 WEST 64TH STREET LLC, a Michigan  
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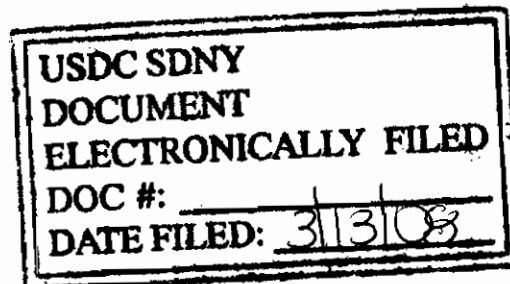
-- and --

KRYSTAL WHEELER,

Nominal Defendant.



Civil Action No.: 07-CV-10968 (RWS)



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Trust, u/a dated April 9, 1986, as Amended and Restated, 43 West 64th Street LLC, and  
Wheeler Family Foundation, Inc., as follows:

1. The parties, having previously agreed to extend the time for Defendants to answer, move or otherwise respond to the Amended Complaint to February 15, 2008, and then subsequently to March 7, 2008, hereby agree to further extend the response deadline to March 14, 2008.

2. This Stipulation may be executed by facsimile counterparts, each of which shall have the same force and effect as an original signature.

DATED: New York, New York

*March 4,* ~~February~~, 2008

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HELLER EHRMAN LLP

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DATED: New York, New York  
February <sup>March</sup> 4, 2008

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*Attorneys for Defendants Thomas R. Wheeler,  
Lisa W. Huzella, Michaelon A. Wright, 43  
West 64th Street LLC, and Wheeler Family  
Foundation, Inc.*

DATED: New York, New York  
March 11, 2008

SO ORDERED:

*Miriam Goldman Cedarbaum*  
United States District Judge  
Part I